

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

211

Date of order: 24.04.2024

CRR-3287-2016(O&M)

Vikas Drall

.....Petitioner(s)

Vs.

Smt. Rekha Drall & Another

.....Respondent(s)

CRR-4631-2016(O&M)

Smt. Rekha Drall

.....Petitioner(s)

Vs.

Vikas Drall & Others

.....Respondent(s)

CRR-4860-2016(O&M)

Smt. Rekha Drall

.....Petitioner(s)

Vs.

Vikas Drall & Others

.....Respondent(s)

CORAM:

HON’BLE MS. JUSTICE NIDHI GUPTA

Present:-

Mr. Sunil Chadha, Senior Advocate with
Ms. Sonia, Advocate
for the petitioner.

Mr. Yugank Goyal, Advocate
for respondent No.1.

Mr. Surinder Kumar Dagar, DAG Haryana.

Nidhi Gupta, J.

CRR-3287-2016

Challenge in the present petition filed by petitioner/**husband** is to judgment dated 17.08.2016 passed by learned Additional Sessions Judge, Gurgaon, partly setting aside judgment of acquittal dated 09.09.2015 passed by learned Judicial Magistrate, 1st Class, Gurgaon; and consequently convicting the petitioner for having committed offence under Section 406 IPC and sentencing him to pay Rs.2 lakh as compensation and to furnish bonds in the sum of Rs.50,000/- with one surety in the like amount each as per the provisions of Section 437-A Cr.P.C.

CRR-4631-2016

Challenge in the present petition filed by petitioner/**wife** is to judgment dated 09.09.2015 passed by Judicial Magistrate, 1st Class, Gurgaon, whereby the accused have been acquitted in case FIR No.404 dated 09.11.2011 under Sections 406, 498-A and 34 IPC registered at Police Station Sadar, Gurgaon; **and** judgment dated 17.08.2016 passed by learned Additional Sessions Judge, Gurgaon, whereby only the petitioner has been convicted under section 406 IPC and other two accused were acquitted in the above said FIR.

CRR-4860-2016

Challenge in the present petition filed by petitioner/**wife** is to judgment dated 09.09.2015 passed by learned Judicial Magistrate, 1st Class, Gurgaon; and judgment dated 17.08.2016 passed by learned Additional Sessions Judge, Gurgaon, emanating from a complaint filed by the petitioner/wife under Section 12 of the DV Act.

2. Both the petitions i.e. CRR-3287-2016 and CRR-4631-2016 are being disposed of by this common order as parties, facts, issues involved in both these cases are identical, and both cases arise out of the same one FIR No.404 dated 9.11.2011. For the sake of convenience, the facts are being drawn from, and parties are being referred to as per their status in CRR-3287-2016 filed by the petitioner/husband.

3. Learned Senior Counsel appearing on behalf of the petitioner/husband has inter alia submitted that the petitioner was married to respondent No.1 on 11.03.2011 as per Hindu rites and ceremonies. No child was born out of this wedlock. It is stated that right since the inception of the marriage, the parties did not get along. Eventually, respondent No.1 left the matrimonial home of her own free will on 29.10.2011 i.e. within seven months of marriage. Thereafter, respondent No.1 filed the present FIR No.404 dated 09.11.2011 under Sections 406, 498-A and 34 IPC at Police Station Sadar, Gurgaon. Three persons were named as accused in the said FIR the same being the present petitioner/husband and parents of the petitioner. The three accused persons faced trial, and vide judgment dated 09.09.2015 learned trial Court acquitted all the accused. The respondent No.1 challenged judgment dated 09.09.2015 by way of appeal bearing No.25 of 05.10.2015/12.04.2016 before the learned Additional Sessions Judge, Gurgaon who, vide impugned judgment dated 17.08.2016 upheld the acquittal of parents of the petitioner; however, convicted the petitioner under Section 406 IPC; and sentenced him as above.

4. Learned Senior Counsel contends that the reasoning of the learned Appellate Court is fundamentally flawed in as much as the

learned Appellate Court has ignored relevant evidence. It is stated that in actual fact no offence under Section 406 IPC is made out against the petitioner. It is submitted that in order to constitute an offence under Section 406 IPC, the prosecution is firstly required to prove *entrustment* of dowry articles to the accused; secondly there should be a *demand* by the complainant side seeking return of the said articles; and thirdly, there has to be a *refusal* on part of the accused to return the said dowry articles. In the present case none of the said three necessary ingredients to constitute an offence under Section 406 IPC, are satisfied. It is submitted that in this regard, learned lower Appellate Court has misread the evidence. Neither the complainant in her evidence as PW2 nor her father as PW3 has stated as to what articles were entrusted to whom nor have they alleged that the complainant side ever raised any demand from any of the accused to return the alleged dowry articles. In the absence of any such statement on part of the prosecution witnesses, the petitioner could not have been convicted.

5. It is further submitted that despite this, the learned lower Appellate Court has convicted the petitioner on the mistaken assumption that demand for returning dowry articles was made by the complainant side. It is contended that when there is even no such assertion on part of the complainant side, then how could the learned lower Appellate Court have drawn such a factually wrong inference. It is reiterated that despite there being no statement from the complainant side available on record, learned lower Appellate Court committed illegality in holding that the petitioner was retaining dowry articles in spite of demand made by the complainant for returning the same. As such, the learned

lower Appellate Court has totally mistakenly held that *“this evidence of the prosecution is credit-worthy and reliable”*. Learned Senior Counsel contends that once there is no evidence available at all on record to even prima facie show that any dowry articles were entrusted to the petitioner; or that they were ever demanded back from him; or that the petitioner refused to return the same, it is stated that accordingly, it is not clear as to which evidence has the learned lower Appellate Court relied upon in convicting the petitioner, and moreso when the demand for returning the car was made, the same was handed over to complainant party in the Court premises itself.

6. In support of his submissions, learned Senior Counsel relies upon judgment of Hon’ble Supreme Court in **“Harmanpreet Singh Ahluwalia & Others Vs. State of Punjab & Others” 2009 (7) SCC 712, Law Finder doc id # 190773**; this Court in **“Avdesh Sharma Vs. State of Haryana” 2014 (3) RCR (Cr) 379, Law Finder doc Id # 563830**; **“Partap Singh & Others Vs. State of Haryana & Another” 2015 (8) RCR (Criminal), Law Finder doc Id # 711009**; and of Delhi High Court in **“Raj Kumar Khanna Vs. State (NCT of Delhi) & Others” 2003 (1) HLR 418, Law Finder doc Id # 178874**.

7. Learned counsel for respondent No.1/wife does not controvert the above said submissions made on part of the petitioner, neither on facts nor on law.

8. No other argument is made on behalf of the parties.

9. I have heard learned counsel for the parties and perused the case file in detail.

10. Perusal of record of the case shows that following are the brief facts of the case in chronological order: –

11.03.2011 - Marriage was solemnized between the petitioner Vikas Drall and the complainant Rekha Drall/respondent No.1 herein.

29.10.2011 – The record reveals that due to matrimonial discord, the complainant called her father and left the matrimonial home on 29.10.2011 i.e. before even one year of marriage had elapsed. No child was born from this wedlock.

09.11.2011- Then the complainant registered the present FIR No. 404 dated 09.11.2011 under Sections 406, 498-A and 34 IPC at Police Station Sadar, Gurgaon, against her husband/petitioner herein, her parents-in-law and unmarried sister-in-law. During investigation, the unmarried sister-in-law was exonerated; and challan was filed only against the petitioner and parents-in-law of the complainant.

21.05.2012–Consequently, the petitioner filed petition u/s 13 of the Hindu Marriage Act, 1955 before the court of District Judge, Rohini Courts, New Delhi seeking dissolution of marriage on the ground of cruelty at the instance of the complainant.

23.08.2012 - After the presentation of challan trial court (JMJC, Gurgaon) framed charges under Sections 498A, 406, 323, 506 read with Section 34 of the IPC. During trial, the complainant appeared as PW2 whereas her father

Balbir Singh appeared as PW3.

09.09.2015 - After due consideration of the matter, the learned trial Court acquitted all the accused i.e. the petitioner as well as his parents from all the charges. In this regard, the relevant findings of the learned trial court are contained in para 23 of the judgment dated 09.09.2015 which reads as follows: –

“23. From my above discussion, in the present case it is clear that no such cruelty has been committed by the accused persons upon the complainant. It is pertinent to mention here that from the case file it is clear that the complainant herself admitted the fact that she used to visit her parental house meaning thereby she had liberty to go to her lather's house. She further stated that she completed her B.Ed course after the marriage. This shows that the accused persons co-operated her in completing her studies after the marriage. The prosecution has not got examined any other relative of the complainant, not even one of the brother of the complainant to prove the demand of the dowry. Even the statements regarding amount spent by the complainant party at the time of the marriage differ as complainant stated that in her complaint Rs.25 to 30 lacs was spent at the time of the marriage but in witness-box she stated that Rs. 19-20 lacs was spent but when her father stepped into the witness-box as PW3, he stated that Rs.16 to 17 lacs was spent at the time of the marriage. There is a lot of difference between 16 to 30 lacs. From the incident of 29.10.2011, it is clear that both the parties received injuries in an assault but this assault cannot be given the shape of cruelty on the pretext of demand of dowry as there are several contradictions in the statements made by the complainant. Even no explanation was given as to why no case was registered at Delhi. From the injuries received by both the parties and evidence tendered on record, it cannot be made

out as to which party was aggressor. In these circumstances, this assault can be termed as free fight. Regarding the demand of dowry, the complainant herself admitted that no demand of dowry was made prior to the marriage, so it can be presumed that the articles given at the time of the marriage was a gift by the parties of the complainant.”

17.08.2016– Against the aforesaid judgment dated 09.09.2015, the complainant went in Criminal Appeal No.25 of 05.10.2015/12.04.2016; in which the learned Appellate Court while maintaining the acquittal of the parents of the petitioner, convicted the petitioner under Section 406 of the IPC and sentenced him to pay fine of Rs. 2 Lacs as compensation. The record shows that the said amount was deposited by the petitioner on the same day i.e. 17.08.2016 and was even accepted by the complainant.

11. It is in this background that the:

CRR-3287-2016- has been filed by the petitioner/husband challenging the judgment dated 17.08.2016 passed by the Appellate Court, convicting and sentencing him for the offence under Section 406 of the IPC;

CRR-4631-2016- has been filed by the complainant/wife against the aforesaid judgements dated 09.09.2015 as well as 17.08.2016 passed by the learned trial Court and the First Appellate Court respectively;

CRR-4860-2016–Whereas, this petition has been filed by the complainant against another order dated 09.09.2015 passed by the Ld. Trial Court; and judgment dated 17.08.2016 passed by the Ld. Additional Sessions Judge, Gurgaon, whereby complaint filed by the complainant against the

petitioner, his parents, his brother as well as sister under Section 12 of the DV Act, stands dismissed.

12. It is imperative to point out that although in the present proceedings under the present FIR No.404 dated 09.11.2011, the learned Additional Sessions Judge, Gurgaon vide order dated 17.08.2016 has convicted the petitioner for offence under Section 406 IPC; however, the same learned Additional Sessions Judge, Gurgaon in the proceedings emanating from the DV Act, vide order dated 17.08.2016 itself has exonerated the petitioner and held that the complainant has failed to prove any of the demands of dowry or act of domestic violence committed upon her. The relevant findings shall be referred to shortly hereinafter.

27.02.2023– In the meantime, in the divorce proceedings initiated by the petitioner, the learned Principal Judge, Family Court, North-West, Rohini, Delhi allowed the said petition holding that the petitioner has been subjected to cruelty at the hands of the complainant. Hence, the marriage between the parties stood dissolved w.e.f. 27.02.2023.

11.09.2023–Against the above said decree of divorce dated 27.02.2023, the complainant filed an appeal which has been dismissed by a Division Bench of the High Court of Delhi vide order dated 11.09.2023. The relevant findings are contained in Para Nos. 20 to 30, which are reproduced hereinbelow:-

“20. Admittedly, the parties got married on 11.03.2011 but their marriage was tumultuous right from its beginning. The evidence on record established that the marriage for the parties was not a bed of roses as the appellant had extreme

reluctance to conjugal relationship and it was after much cajoling that they were able to develop a conjugal relationship, though it was totally devoid of any emotional relationship.

21. The evidence as led by the parties also proved that the appellant had extended threats of committing suicide not on one but two occasions. It was with great efforts that the respondent was able to dissuade her from executing her threats. It has been held by the Apex Court in the case of Pankaj Mahajan vs Dimple, (2011) 12 SCC 1, that constant fear on account threats of suicide can amount to cruelty as it would be harmful or injurious to live with such a spouse.

22. In the case of Nagendra vs K. Meena, (2016) 9 SCC 455 the Supreme court observed that the action of the Respondents such as locking herself in the bathroom and pouring kerosene so as to commit suicide, amounted to mental cruelty. It was further observed that had she been successful in her attempt to commit suicide, it was the husband who would have been put in immense difficulty because of the law and had his life ruined. Such an act of mental cruelty could not be looked upon lightly by the courts and was sufficient to entitle the husband to a decree of divorce. The Apex Court referred to the case of Pankaj Mahajan (supra) to arrive at this conclusion.

23. Such threats are likely to affect the peace of mind and take a toll on the mental wellbeing of the respondent and thus, the learned Principal Judge had rightly held this behaviour of the appellant to be an act of immense cruelty.

24. It has also emerged in evidence that because of incompatibility and non-adjustment, the appellant had left the matrimonial home merely within 8-10 days of marriage. It is not in dispute that the appellant had returned to the matrimonial home after about six months in September, 2011, but things did not become platonic even then. It has come in

evidence that the appellant refused to participate in the festivities of Karwa Chauth and Diwali. The respondent in his testimony had deposed that she had even refused to keep the fast of Karwa Chauth by asserting that she considered 'Ritesh' as her husband and she had been forced into marriage with the respondent by her parents against her wishes. Such disconnect and constant rejection of any relationship or non acknowledgment of the respondent as a husband is again a source of great mental agony for a husband.

25. The respondent's assertion that there was threat to implicate him and his family members in false cases was turned into reality when an FIR under Section 498A/406/34 IPC was registered not only against him but his parents as well as unmarried sister which according to the respondent was with the sole intent of defaming the unmarried sister and to create hurdles in her marriage. The criminal case has resulted in acquittal of the respondent and all the family members under Section 498A IPC thereby proving that all her allegations of dowry and harassment were not substantiated. Though the respondent had been convicted under Section 406 IPC and Rs.2 lakhs were directed to be paid but as observed by learned Principal Judge, Family Courts, Section 406 IPC pertained only to return of dowry articles and not to cruelty from which the respondent stood absolved. In the present case, the appellant has not been able to prove that she was subjected to any dowry demands or harassed or subjected to cruelty. Though she had alleged harassment on account of dowry, those allegations have not been proved either in the criminal case or in the present case.

26. The Apex Court in the case of Ravi Kumar Vs. Julmidevi (2010) 4 SCC 476 has categorically held that "reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in

the eyes of the society" and it amounts to 'cruelty'. Similar observations were made by the Coordinate Bench of this Court in the case of Rita Vs. Jai Solanki (2017) SCC OnLine Del 907

27. Further, it has been held by the Supreme Court in Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786, that when an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposes them to criminal litigation and, ultimately, if it is found that such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce on such a ground.

28. The respondent though was acquitted under Section 498A IPC as no cruelty could be established, has thus suffered the brunt of the reckless criminal actions initiated by the appellant.

29. Further, the appellant has not denied the incident of 29.10.2011 when her family members had come to her matrimonial home and a fight had ensued in which the respondent and his mother were injured and their MLC was prepared. The appellant has been unable to justify these acts of aggression by her or her family members. In addition, the appellant along with her father had visited the office of the respondent which according to her was to make a complaint against the respondent. She has also admitted having gone with the police and her father to the office of father of the respondent to get him arrested. These kinds of attempts, complaints and the conduct of the appellant can only be termed as designed to humiliate and insult the respondent and his family members. A relationship of marriage rests on mutual trust, respect and companionship and the acts of the appellant, as discussed above, clearly establish and proves that these elements were totally missing from their marriage, essentially on account of the conduct of the appellant.

30. The learned Principal Judge, Family Courts had rightly concluded that the parties have been living separately since October, 2011 and there has been no conjugal relationship and there was no possibility of reconciliation despite efforts being made by the families. The conduct of the appellant has been held to be to have caused immense mental suffering, pain and cruelty to the respondent thereby entitling him to divorce."

13. The petitioner has been convicted under Section 406 of the IPC on account of the following reasoning and findings of learned Additional Sessions Judge, Gurgaon, as contained in Para 18 of the impugned judgment dated 17.08.2016, which reads as under:-

"18. In so far as charge under section 406 Indian Penal Code is concerned, the evidence of prosecution to that extent is reliable and goes against accused. It is settled law that maxim FALSUS IN UNO FALSUS IN OMNIBUS is not applicable in the criminal law and evidence of the witnesses can be partly rejected and partly accepted. Accused cannot take benefit of evidence of a witness on the ground that his part evidence has not been accepted by the court, so he must be considered as an untruthful witness. Rather, on the other hand, it is settled law that even evidence of hostile witness can also be taken into consideration. PW2 Rekha and PW3 Balbir have supported the allegations while testifying that at the time of marriage, dowry articles as mentioned in the list of articles Ex.PW2/A were given to the complainant, accused and his relatives. Memo Ex.PD has also been proved by PW3 Balbir Singh and PW1 SI Balwan Singh who is Investigating Officer of the case and is further supported by PW4 Constable Sandeep. It shows that some of the dowry articles were recovered from the possession of the accused and taken into possession. Not only this, it has

also come on the file that keys of the Accent Car which was given at the time of marriage, was returned to the complainant side in the court itself. This said fact is evident from memo Ex.PH vide which the registration certificate and key of Accent Car was produced by the counsel for accused Vikas in the court itself and handed over to the father of complainant. Thus, it shows that accused Vikas was retaining the dowry articles inspite of the fact that demand was made by the complainant. This evidence of the prosecution is credit-worthy and reliable. As far as the articles given to the parents of accused Vikas and other family members are concerned, those cannot be treated as Stridhan and would be treated as Gifts which cannot be claimed back. As soon as the gift is given, it becomes property of donee and not the donor and donor ceases to have any right therein. Learned trial court has not appreciated the said evidence in a legal manner as far as charge under section 406 Indian Penal Code is concerned.”

(Emphasis added)

14. A perusal of the above reproduced extract/para 18 of the impugned judgment dated 17.08.2016 shows that the primary ground on which the petitioner has been convicted is that recovery of some of the dowry articles was made from the accused; in particular an Accent Car was recovered from the petitioner himself. The learned Appellate Court has further held that the petitioner was retaining the dowry articles, despite the fact that demand for return of the said dowry articles was made by the complainant.

15. After perusal of the case file in detail, I find the above said findings to be contrary to the record as, even in the self-serving statements of the complainant (PW2) and that of her father - Balbir Singh

(PW3), there is not even a whisper as to what dowry articles were entrusted by them to whom. There is again no whisper that either of the above said two witnesses ever asked/raised any demand to return the alleged dowry articles from/against any of the accused, much less to say that either the petitioner or any of his family member ever refused to return back the alleged dowry articles. It is an established precept of law that in order to make out an offence under section 406 IPC, it is essential that firstly there be entrustment of dowry articles to the accused; secondly there should be a demand by the complainant side seeking return of the said articles; and thirdly, there has to be a refusal on part of the accused to return the said dowry articles. In this regard, reference may be made to the following judgments:

16. Relevant part of **Harmanpreet (supra)** is reproduced hereinbelow:-

"11. Criminal breach of trust is defined in Section 405 of Indian Penal Code. The ingredients of an offence of the criminal breach of trust are :

"1. Entrusting any person with property or with any dominion over property.

2. That person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation –

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust."

Section 415 of the Indian Penal Code defines cheating as under:

"Section 415.-Cheating-Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."

An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied :

"i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

17. Relevant part of **Avdesh Sharma (supra)** is reproduced hereinbelow:-

"20. So, I am of the considered view that in the absence of specific allegation of entrustment of dowry articles and specific allegation of beatings, the accused cannot be convicted in respect of offence under Sections 406 and 323 IPC. The approach of the trial Court convicting him for the said offence without any legal evidence cannot sustain the test of legal scrutiny.

21. So far as assertion made by counsel for the complainant that offence under Sections 307 and 313/316 IPC is also made out against the appellant, is concerned, that submission is

*without any substance. As discussed above, the prosecution has not been able to prove that appellant has given any injury to the complainant. Specific injuries have been attributed to Kamni, Hitesh Sharma and Vipula. Kamni and Vipula have been acquitted by the trial Court, whereas Hitesh Sharma died during the pendency of the case before the trial Court. It is not out of place to mention here that complainant has not challenged the acquittal order passed against Kamni and Vipula, not even in the revision petition, as both of them have not been arrayed as party in the revision petition. This Court in authority reported as **Guljar Singh @ Guljar Mohammad and others v. Hazran, 2006(2) RCR (Criminal) 625**, has held that gift articles given to the relatives of husband at the time of marriage did not constitute Istridhan. Similar view was taken in authority reported as **Anju Bala and others v. State of Punjab and another, 2006 (3) RCR (Criminal) 191**. This Court in authority reported as **Vijay Ghuman v. Narinder Singh and another, 2005(2) RCR (Criminal) 837** has held that allegation that dowry articles entrusted to 5 persons is not a specific entrustment. In the present case, there is no allegation of specific entrustment to the appellant, in the application Exhibit PK also and also in the Court.”*

18. Relevant part of **Partap Singh (supra)** is reproduced hereinbelow:-

“17. In the instant case, from a perusal of FIR, it is abundantly clear that there are no allegations of entrustment of dowry articles to the petitioners. There is not a whisper that any istridhan was handed to the petitioners. Entrustment is sine quo non for proving the offence under Section 406 IPC, which is conspicuously missing in the present case. Coming to the alleged offence under Section 498-A IPC, a perusal of FIR would reveal that no specific date or time was mentioned therein

when the complainant was harassed, maltreated or beaten up by the present petitioners for dowry. No MLR has been placed on record. It has come on record and admitted by the complainant that she along with her husband had started living separately since May 2012. The allegation against the petitioners is of instigation which is vague, omnibus and general in nature and appears to have been made out of the frustration who failed to maintain her matrimonial alliance as the husband had filed a divorce petition against her. It cannot be believed that the petitioners would be a beneficiary from the alleged demand of motor cycle. No date or time of the said demand has been mentioned.”

19. Relevant part of **Raj Kumar Khanna (supra)** is reproduced hereinbelow:-

*“29. Admittedly neither the complaint nor the supplementary statement shows any entrustment of any property to the petitioner. In the absence of entrustment question of criminal breach does not arise. Since there was no entrustment of any articles to the petitioner, therefore chances of ultimate conviction on this count are bleak. No useful purpose is going to be served by allowing the proceedings under Section 406 Indian Penal Code to continue against this petitioner. In support reference can be made to the observations of Supreme Court in the case of **Alpic Finance Ltd. v. P. Sadasivan & Anr., 2001 (1) AD (Cr.) SC 467**, Apex Court while dealing with the inherent power of the High Court to quash the complaint and proceedings observed :*

"Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings. We

are of the view that the learned Judge was perfectly justified in quashing the proceedings and we are disinclined to interfere in such matters."

*Reference can also be made to the observations of Punjab & Haryana High Court in the case of **Lakhwinder Singh v. State of Punjab, 2000 CrI LJ 4751**, where it is held that an F.I.R. is liable to be quashed if it does not contain specific allegations of either entrustment or of cruelty. Courts have consistently put an end to criminal proceedings at the initial stage, at the summoning stage and even after charges have been framed which are abuse of the process of Court. High Court has the inherent power to quash proceedings and to pass such orders as are necessary to prevent abuse of the process of the Court or otherwise to secure ends of justice. It is not disputed that such powers should be exercised only as per the guidelines laid down by the Supreme Court in the case of Chaudhary Bhajan Lal (supra). Supreme Court in the case of Mr. K. Ramakrishna & Ors. V. State of Bihar & Anr., (supra), observed that High Court has inherent power to quash proceedings to secure ends of justice to protect abuse of the process of law. If allegations in the F.I.R. do not constitute an offence, then F.I.R. can be quashed.*

30. Seizing of letters, greeting cards, diary and photographs create doubt on the bonafide of the police action. We fail to understand how these could form part of "stridhan". Decidedly police acted in haste in seizing such documents. No explanation has been given why these documents were seized.

For the foregoing reasons we hold that no offence under Section 406 Indian Penal Code in the facts of this case qua the petitioner prima facie has been made out....."

20. As already noted here in above, the impugned findings

are contrary to the record as the evidence categorically shows the absence

of the three ingredients necessary to constitute an offence under section 406 IPC. It is therefore not clear as to on what basis has the learned Additional Sessions Judge, Gurgaon reached the impugned conclusion. No act of commission or omission on part of the petitioner constitutes an offence under section 406 IPC as defined in the case law cited here in above. As such, the impugned findings of the learned Appellate Court cannot be upheld.

21. In respect of the Accent Car recovered from the petitioner, the following findings of the learned trial court are relevant: –

“17. The factum of the marriage of the complainant with the accused person on 11.3.2011 is an admitted fact. The complainant has alleged that the accused persons demanded dowry from her soon after the marriage. She alleged in her complaint that on the very next date of marriage i.e. 12.3.2010, accused persons demanded skoda car from her. But it is pertinent to mention here that when the complainant stated in her complaint that a skoda car was demanded by the accused persons after the marriage but when she stepped into the witness-box as PW2, she stated that an i-10 car was booked prior to the marriage but at the demand of the accused persons it was changed to the Accent Car so this car was given in the marriage. It is very surprising that when the accused persons changed the accent car prior to the marriage then why no demand of skoda car was made at that time and then the demand was made on the very next date of the marriage which could be made prior to the marriage also. Also, the complainant has not tendered any document to prove the booking of the i-10 car. She also made contradictory statement in her cross-examination that no demand was made prior to the marriage.”

22. From the above, it is clear that the learned Additional Sessions Judge, Gurgaon has passed the impugned order on the basis of conjectures and surmises without taking into account the complete picture.

23. Furthermore, as has already been adverted to hereinabove, the above said impugned findings are prima facie unsustainable as the same learned Additional Sessions Judge, Gurgaon, vide order of even date i.e. 17.08.2016, in proceedings under the DV Act has held that the petitioner made no dowry demands from the complainant.

24. Brief factual matrix is that the respondent No.1/wife had also filed a complaint against the petitioner bearing Complaint Case No.89 of 2012 dated 05.09.2012/01.07.2013 under Section 3/12 read with Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2007. The said complaint was dismissed by learned Judicial Magistrate, 1st Class, Gurgaon vide judgment dated 09.09.2015, wherein in Para 12, it has been held as under:-

“12. The said Act is enacted with a view to protect the victim from the acts of domestic violence but it cannot be used the weapon to harass the in-laws. As the complainant has failed to prove any of the demand of dowry or act of domestic violence committed upon her, the present complaint, stands dismissed being devoid on merits. File be consigned to the record-room after due compliance.”

(Emphasis added)

25. Respondent No.1/wife had filed an appeal against the said judgment dated 09.09.2015 before the learned Additional Sessions

Judge, Gurgaon, which was dismissed by the learned Sessions Judge vide judgment dated 17.08.2016, with the following findings:-

“12. From the evidence, it is admitted fact that appellant was married to the respondent no.1 on 11.03.2011. The allegations of the appellant are that on the next day of marriage, the respondents started demanding Skoda Car although they had given Hyundai Accent Car, however, these allegations do not appear to be genuine. It has come in the evidence of the complainant side that before marriage, even at the time of ring ceremony, no demand of dowry was made by the respondents' side and all the dowry articles were given as per their own wishes. It is not probable that if respondents were not making any demand of dowry before marriage and sufficient dowry was given to them, why in one night, they would become greedy for the dowry and would demand another Car. So these allegations of the appellant-complainant are concocted in order to involve the respondents in this case.

13. As far as allegations of giving amount of Rs.2,00,000/- on 16.03.2011 on the demand of accused party are concerned, the same are not credible and reliable. It is the case of the complainant that an amount of Rs.1,70,000/- was withdrawn from the bank account of brother of appellant namely Jitender, however, no official from the concerned bank has been examined by the appellant for the reasons known to her and, thus, there is no cogent evidence on the file that this amount was withdrawn from the bank and given to the respondents-accused. Merely, oral evidence in this regard cannot be believed. It is settled law that if some evidence is available in the form of document, then the said evidence must be proved by producing the document itself and no amount of other evidence can be believed.

14. The other allegations levelled against the respondents that the appellant-complainant was kept in a room in her matrimonial house and was also beaten by the respondents and thereafter the appellant got herself medically examined at Delhi and Gurgaon. No doubt, PW5 Doctor Nawal Kishore has been examined to prove the injuries on the person of appellant but the evidence of appellant cannot be believed in this regard. It is the case of the appellant herself that she was firstly medically examined at Delhi and thereafter at Gurgaon. Under these circumstances, it was the duty of the appellant to examine the Doctor of Delhi who medically examined her at the first instance. Under these circumstances, the contention of learned counsel for respondents that there were variations in both the MLRs becomes more probable and adverse inference would be drawn against the appellant that she has withheld the best evidence and had she produced the same, it would have falsified the evidence of the Doctor who medically examined her at Gurgaon”.

26. This Court finds it to be most intriguing, incongruous, inexplicable, and incomprehensible that the same learned Additional Sessions Judge, Gurgaon, in same set of facts and circumstances between the same parties vide order of even date i.e. 17.08.2016, held two diametrically opposite and contradictory views. Clearly, therefore, the impugned view is unsustainable on this short ground itself. It is established tenet of law that if two views are possible, then the one in favour of the accused has to be drawn.

27. As mentioned above, the petitioner/husband had filed a petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, seeking divorce from respondent No.1/wife, which was allowed by the learned

Family Court, Rohini, Delhi, vide judgment dated 27.02.2023. Respondent No.1/wife had challenged the said decree of divorce dated 27.02.2023 before the High Court of Delhi. The said appeal of respondent No.1 was dismissed by the Delhi High Court vide judgment dated 11.09.2023, with the following findings: -

“17. Learned Principal Judge, Family Courts in her detailed discussion held that the various acts of the appellant namely her refusal to have conjugal relationship, threats of suicide, her complaints in the police and also the Domestic Violence Act which both have resulted in acquittal along with her alleged jokes of being involved with another person or being pregnant from him were all acts of immense cruelty and trauma for the respondent and thereby, allowed the petition and granted divorce under Section 13 (1)(i-a) of HMA.

18. Aggrieved by the said order of grant of divorce, the present appeal has been preferred.

19. Submissions heard.

20. Admittedly, the parties got married on 11.03.2011 but their marriage was tumultuous right from its beginning. The evidence on record established that the marriage for the parties was not a bed of roses as the appellant had extreme reluctance to conjugal relationship and it was after much cajoling that they were able to develop a conjugal relationship, though it was totally devoid of any emotional relationship.

21. The evidence as led by the parties also proved that the appellant had extended threats of committing suicide not on one but two occasions. It was with great efforts that the respondent was able to dissuade her from executing her threats. It has been held by the Apex Court in the case of Pankaj Mahajan vs Dimple, (2011) 12 SCC 1, that constant fear

on account threats of suicide can amount to cruelty as it would be harmful or injurious to live with such a spouse.

22. In the case of Nagendra vs K. Meena, (2016) 9 SCC 455 the Supreme court observed that the action of the Respondents such as locking herself in the bathroom and pouring kerosene so as to commit suicide, amounted to mental cruelty. It was further observed that had she been successful in her attempt to commit suicide, it was the husband who would have been put in immense difficulty because of the law and had his life ruined. Such an act of mental cruelty could not be looked upon lightly by the courts and was sufficient to entitle the husband to a decree of divorce. The Apex Court referred to the case of Pankaj Mahajan (supra) to arrive at this conclusion.

23. Such threats are likely to affect the peace of mind and take a toll on the mental wellbeing of the respondent and thus, the learned Principal Judge had rightly held this behaviour of the appellant to be an act of immense cruelty.

24. It has also emerged in evidence that because of incompatibility and non-adjustment, the appellant had left the matrimonial home merely within 8-10 days of marriage. It is not in dispute that the appellant had returned to the matrimonial home after about six months in September, 2011, but things did not become platonic even then. It has come in evidence that the appellant refused to participate in the festivities of Karwa Chauth and Diwali. The respondent in his testimony had deposed that she had even refused to keep the fast of Karwa Chauth by asserting that she considered 'Ritesh' as her husband and she had been forced into marriage with the respondent by her parents against her wishes. Such disconnect and constant rejection of any relationship or non acknowledgment of the respondent as a husband is again a source of great mental agony for a husband.

25. *The respondent's assertion that there was threat to implicate him and his family members in false cases was turned into reality when an FIR under Section 498A/406/34 IPC was registered not only against him but his parents as well as unmarried sister which according to the respondent was with the sole intent of defaming the unmarried sister and to create hurdles in her marriage. The criminal case has resulted in acquittal of the respondent and all the family members under Section 498A IPC thereby proving that all her allegations of dowry and harassment were not substantiated. Though the respondent had been convicted under Section 406 IPC and Rs.2 lakhs were directed to be paid but as observed by learned Principal Judge, Family Courts, Section 406 IPC pertained only to return of dowry articles and not to cruelty from which the respondent stood absolved. In the present case, the appellant has not been able to prove that she was subjected to any dowry demands or harassed or subjected to cruelty. Though she had alleged harassment on account of dowry, those allegations have not been proved either in the criminal case or in the present case."*

28. In this situation, judgment of Hon'ble Supreme Court in **"Kamlesh Kalra Vs. Shilpika Kalra & Others"** Law Finder Doc ID # 1739868, is relevant, wherein it has been held as under:-

"Stridhan - No allegation in FIR that wife ever demanded Stridhan articles from her mother or her husband or that there was refusal by said parties to return Stridhan - Keeping in view that husband has already deposited Stridhan articles it cannot be said that mother-in-law or husband ever wanted to keep Stridhan articles, as well as money with them.

Indian Penal Code, 1860 Section 406 Criminal proceedings - Quashing - Wife complainant and husband were living

separately after two years of marriage - Husband filed divorce petition - Even though, divorce petition has been pending for over decade, no allegation in said proceedings made by wife claiming any Stridhan - All Stridhan articles, as per list initially furnished by wife along with Pay Order of L 5,98,000 was tendered to wife but she did not accept same - Stridhan articles, as well as Pay Order, were deposited with Investigation Officer - In FIR, it is not even alleged that complainant wife ever demanded Stridhan articles from her mother or her husband or that there was refusal by said parties to return Stridhan - Keeping in view that husband has already deposited Stridhan articles it cannot be said that mother-in-law or husband ever wanted to keep Stridhan articles, as well as money, with them - FIR qua mother-in-law quashed."

29. In view of the factual and legal position, as noticed here in above, CRR-3287-2016 filed by **husband** is **allowed**; and CRR-4631-2016 filed by the **wife** is **dismissed**.

30. Pending application(s) if any also stand(s) disposed of.

CRR-4860-2016

31. The present revision petition emanates from proceedings initiated by the respondent No.1/wife under the D V Act. Besides the above FIR no. 404 dated 9.11.2011, the complainant had also filed a Complaint Case No.89 of 2012 dated 05.09.2012/01.07.2013 under Section 3/12 read with Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2007, against the accused, including the present petitioner. The said complaint was dismissed by learned Judicial Magistrate, 1st Class, Gurgaon vide judgment dated 09.09.2015. The appeal filed there-against by the complainant was also dismissed by the Id.

Additional Sessions Judge, Gurgaon, vide judgement dated 17.08.2016.

Hence, present revision petition.

32. Besides the fact that in view of the discussion hereinabove nothing sustains in the present case on merits, learned counsel for the wife/petitioner herein, has also prayed that he may be permitted to withdraw the present petition as the same is not maintainable in view of judgment dated 24.04.2023 passed by a co-ordinate Bench of this Court in CRM-M-19553-2023, titled as 'Jaspal Kaur Alias Pinki and others vs. State of Punjab and another', wherein it has been held that '*the proceedings under Section 12 of the DV Act are civil in nature, therefore, a petition under Section 482 Cr.P.C. or revision under Section 397 Cr.P.C., assailing the order passed in complaint filed under the provisions of DV Act are not maintainable*'.

33. Permitted to do so.
34. Dismissed as withdrawn.
35. Pending application(s) if any also stand(s) disposed of.

24.04.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No